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### CPLR 3211(c): Amendment Allows the Court to Treat a Motion Under 3211(a) or (b) As One for Summary Judgment Before Joinder of Issue

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answer written interrogatories<sup>94</sup> or examining her by open commission in Israel at his own expense. Both procedures are authorized by CPLR 3108.

It can be seen that by utilizing provisions of the CPLR, the court in *Ratner* was able to offer the petitioner most of the advantages of a proceeding under the Uniform Support of Dependents Law. When the latter is unavailable, the procedure adopted in *Ratner* allows a court to hear and enforce a meritorious support claim which might otherwise go unsatisfied.

#### ARTICLE 32 — ACCELERATED JUDGMENT

*CPLR 3211(c): Amendment allows the court to treat a motion under 3211(a) or (b) as one for summary judgment before joinder of issue.*

CPLR 3211(c) has been revised by the Judicial Conference<sup>95</sup> to settle case law conflict<sup>96</sup> as to whether a motion under 3211(a) or (b) may be treated as one for summary judgment before issue has been joined. The section now specifically allows this. The rule was further amended to require the court to give the parties adequate notice of its intention to treat the motion as one for summary judgment. The Judicial Conference's stated purpose in adding this requirement was to ensure "that an appropriate record and submission of the facts and law may be made by the parties. . . ."<sup>97</sup> Lastly, the rule was amended to provide that immediate trial of the issues raised on the motion can be ordered "when appropriate for the expeditious disposition of the controversy." The quoted clause was added to avoid *sub rosa* preferences.<sup>98</sup>

*CPLR 3212(c): Rule now authorizes immediate trial on motion for summary judgment where the motion is based on any of the grounds enumerated in CPLR 3211(a).*

CPLR 3212(c) has been changed to authorize an immediate trial of issues of fact where a motion for summary judgment is based on any

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<sup>94</sup> Written questions were used similarly in *Zilken v. Leader*, 23 App. Div. 2d 644, 257 N.Y.S.2d 185 (1st Dep't 1965) (mem.) and *Ascona Cie., Anstalt v. Horn*, 32 App. Div. 2d 755, 301 N.Y.S.2d 414 (1st Dep't 1969) (mem.), where depositions were taken in foreign countries.

<sup>95</sup> JUDICIAL CONFERENCE OF THE STATE OF NEW YORK, REPORT TO THE 1973 LEGISLATURE IN RELATION TO THE CIVIL PRACTICE LAW AND RULES AND PROPOSED AMENDMENTS ADOPTED PURSUANT TO SECTION 229 OF THE JUDICIARY LAW 81 (1973) [hereinafter JUDICIAL CONFERENCE REPORT].

<sup>96</sup> See 4 WK&M ¶ 3211.50a.

<sup>97</sup> JUDICIAL CONFERENCE REPORT 82, citing *Mareno v. Kibbe*, 32 App. Div. 2d 825, 302 N.Y.S.2d 324 (2d Dep't 1969), modifying 56 Misc. 2d 451, 289 N.Y.S.2d 6 (Sup. Ct. Westchester County 1968), discussed in *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 560 (1970).

<sup>98</sup> JUDICIAL CONFERENCE REPORT 82.